

***UNITED STATES DISTRICT COURT***

***DISTRICT OF MAINE***

***UNITED STATES OF AMERICA***

***v.***

***SOLOMON B. SILVER***

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***CRIM. NO. 96-72-P-H***

***MEMORANDUM DECISION ON THE GOVERNMENT'S MOTION  
FOR REMISSION OF BOND FORFEITURE***

Pursuant to Fed. R. Crim. P. 46(e)(4), the government has moved for partial remission of the forfeiture of bond resulting from this court's judgment of default dated January 13, 1997 (Docket No. 19). The default resulted from the defendant's failure to appear. The bond at issue, in the amount of \$500,000, was given by Morris Silver and Lynn Silver, the defendant's father and stepmother, as sureties.

The following facts were established at a testimonial hearing on the motion held before me on June 12, 1997. After learning that Solomon Silver had failed to appear, Morris Silver provided the United States Marshal Service with the partial or complete names of some individuals whom he thought might be of assistance in locating Solomon. He also provided a credit card bill showing rental of a vehicle in Connecticut shortly after the failure to appear. He hired one or more professional "bounty hunters" to find Solomon. Once engaged, these individuals advised Morris to have no further contact with any law enforcement personnel, and he followed that advice, despite the fact that he had been instructed to cooperate fully with the Marshal Service and to provide them with as much assistance as possible in locating Solomon.

Morris traveled to Florida and Arizona in search of Solomon. In Arizona, he contacted a cousin of Solomon, Stephen Levine, whose name he did not provide to the Marshal Service, and through this individual he was able to locate Solomon in San Diego, California. Solomon was “lured” to a hotel room in San Diego, where he was apprehended by Morris’s man, on January 17, 1997. He and Morris then drove Solomon back to Maine in a rented van, arriving on January 21, 1997. Solomon surrendered to the Marshal Service at the federal courthouse in Portland on January 22, 1997. Morris incurred approximately \$25,000 in expenses in connection with his search for and apprehension of Solomon.

In the meantime, four deputy marshals of a total of eight in Maine devoted their full-time efforts to the search for Solomon. Two other Maine deputies devoted approximately half of their time. Many of the daily responsibilities of these individuals went unfulfilled during this time, or had to be performed by the remaining personnel, who thus were diverted from their regular duties. Deputy marshals in Ohio, Tennessee, Massachusetts and California also devoted time to the search. By the week of January 13, 1997, the Marshal Service was concentrating its apprehension efforts in southern California.

Morris and Lynn do not dispute that the amount of the Marshal Service’s actual out-of-pocket expenses incurred in its search for the fugitive Solomon, a total of \$3,744, should not be remitted from the forfeiture of their bond. They contend, however, that they should pay no more. Specifically, they contend that the forfeiture should not include any amount representing the time spent by deputy marshals in the nationwide search, because recovery of fugitives is the job of the Marshal Service and the deputies would have received their salaries even if they had not been engaged in the search for Solomon. They do not contest the number of man-hours determined by

the Marshal Service to have been expended in the search (1,072), nor do they contest the reasonableness of the hourly value assigned by the Marshal Service to the services of its deputies (\$25). The sum of \$26,800, then, represents the reasonable value of the man-hours expended by the Marshal Service in behalf of its efforts to apprehend Solomon.

A district court may consider six factors when deciding whether to remit the forfeiture of a bond. Those factors are: 1) the defendant's willfulness in breaching a release condition; 2) the sureties' participation in apprehending the defendant; 3) the cost, inconvenience, and prejudice suffered by the government; 4) mitigating factors; 5) whether the surety is a professional or a member of the family or a friend; and 6) the appropriateness of the amount of the bond. Not all of the factors need to be resolved in the government's favor. The government's failure to show "prejudice, cost or inconvenience" will not mandate remission.

*United States v. Amwest Surety Ins. Co.*, 54 F.3d 601, 603 (9th Cir. 1995)(citations omitted). *See also United States v. Gutierrez*, 771 F.2d 1001, 1003 (7th Cir. 1985).

Here, Solomon's flight was obviously willful. The appropriateness of the amount of the bond cannot seriously be questioned. The fact that the sureties are the fugitive's father and stepmother and that Morris himself "apprehended" Solomon weigh in favor of some remission of the bond forfeiture. In my view, there are no other mitigating factors.<sup>1</sup> While Morris did bring Solomon back to Maine, in all meaningful respects he failed to inform the Marshal Service of his efforts, his travels, his leads, or the fact that he had apprehended Solomon five days before he surrendered.<sup>2</sup> Thus, while

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<sup>1</sup> The court may not consider the financial plight or interests of the sureties seeking remission. *Gutierrez*, 771 F.2d at 1004; *United States v. Skipper*, 633 F.2d 1177, 1180 (5th Cir. 1981). Although Morris also noted that he was motivated to find Solomon before the authorities did because he feared that his son might be killed in a shootout with law enforcement personnel, there is no basis in the record for concluding that this concern was well founded.

<sup>2</sup> Indeed, soon after the hearing before me on January 8, 1997 on the government's motion for judgment of default of bail, Morris ceased returning phone calls from the Marshal Service.

the government does not dispute that Morris played a substantial role in securing the presence of Solomon in Maine some three weeks after his initial flight, consideration of that factor does not weigh wholly in the sureties' favor.

A bail forfeiture should bear a reasonable relation to the cost and inconvenience to the government and the courts caused by the defendant. *Jeffers v. United States*, 588 F.2d 425, 427 (4th Cir. 1978). Cost and inconvenience includes additional litigation as well as the monetary value of the search itself, representing, as it does, displaced resources. The government's search for a fugitive defendant and the additional proceedings against that defendant are sufficient to provide a basis for a finding that the government suffered considerable cost and inconvenience even if no dollar amount is specified. *United States v. Abernathy*, 757 F.2d 1012, 1015-16 (9th Cir. 1985). However, "[t]he central purpose of bail — to insure the defendant's appearance — could easily be defeated if the government's costs were the only thing at issue." *United States v. Cervantes*, 672 F.2d 460, 462 (5th Cir. 1982). Deterrence of future violations by the defendant and others, for example, is also an important function of bail forfeiture. *Jeffers*, 588 F.2d at 427.

Those, including caring parents like Morris and Lynn Silver, who obligate themselves as bail bond sureties, and on the basis of whose undertakings courts' release decisions fundamentally rest, must understand the seriousness of their role. Likewise, they and their bailees must appreciate the unavoidable consequences of forfeiture. Preservation of the integrity of the bail bond system requires nothing less. In this case, Morris Silver made a decision early on to accept the advice of his "bounty hunters" to have no further contact with law enforcement personnel. As a consequence, he failed to inform the Marshal Service of such critical facts as the Levine lead, the knowledge he acquired that Solomon was in San Diego and that his private contractors had apprehended Solomon

and had him in custody as of June 17, 1997, five days before the Marshal Service had a basis for terminating its own search efforts. These circumstances, together with consideration of all other relevant factors — including, especially, deterrence — lead me to conclude that the sureties should be assessed all of the government's out-of pocket costs and the full value of all manpower expended by the Marshal Service in its search for Solomon Silver.

For the foregoing reasons, I **GRANT** the government's motion for remission of all but \$30,544 of the \$500,000 bail forfeited by this court's order dated January 3, 1997. The court's default judgment dated January 13, 1997 is hereby modified by reducing the amount of the judgment to \$30,544.

*Dated this 16th day of June, 1997.*

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*David M. Cohen*  
*United States Magistrate Judge*